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IN THE COURT OF APPEALS OF INDIANA

DEMETRIUS A. FRANKLIN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 02A03-0607-CR-344
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Frances C. Gull, Judge
Cause No. 02D04-0512-MR-11

March 28, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Judge

Demetrius A. Franklin appeals his sentence for murder.[1] Franklin raises one issue, which we restate as whether his sixty-five-year sentence is inappropriate in light of the nature of the offense and the character of the offender. We affirm.

The relevant facts follow. The probable cause affidavit and testimony at the sentencing hearing indicate that Franklin believed Kedrin Thomas was seeing Franklin's estranged wife.[2] Franklin told his wife that, if she left him, he would kill her and whomever she was seeing. Two weeks later, Franklin slashed the tires on Thomas's vehicle. The next night, on December 3, 2005, Thomas stopped by his residence and was confronted by Franklin on his front porch. Franklin shot and killed Thomas while Thomas's daughter, Franklin's wife, and her two children were in a nearby car.

The State charged Franklin with murder, possession of a firearm by a serious violent felon,[3] and being an habitual offender.[4] Franklin pleaded guilty to murder, and the State dismissed the remaining charges and other unrelated charges. At the sentencing hearing, the trial court found Franklin's criminal history, the fact that all prior rehabilitation attempts had failed, and the fact that the seriousness of his criminal activity had escalated to be aggravating factors. The trial court found Franklin's guilty plea,

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[1] Ind. Code § 35-42-1-1 (Supp. 2005) (subsequently amended by Pub. L. No. 151-2006, § 16 (eff. July 1, 2006); Pub. L. No. 173-2006, § 51 (eff. July 1, 2006)).

[2] We were not provided with the transcript of the guilty plea hearing and do not know the information that formed the factual basis for Franklin's plea.

[3] Ind. Code § 35-47-4-5 (Supp. 2005) (subsequently amended by Pub. L. No. 151-2006, § 21 (eff. July 1, 2006)).

[4] Ind. Code § 35-50-2-8 (Supp. 2005).

remorse, and acceptance of responsibility as mitigating factors. The trial court found that the aggravating factors outweighed the mitigating factors and sentenced Franklin to sixty-five years in the Indiana Department of Correction.

The issue is whether Franklin's sixty-five-year sentence is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B) provides that we "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

Franklin asks that we revise his maximum sentence of sixty-five years to the advisory sentence of fifty-five years. Franklin argues that he is not one of the worst offenders entitled to the maximum sentence. The Indiana Supreme Court has noted that "the maximum possible sentences are generally most appropriate for the worst offenders." Buchanan v. State, 767 N.E.2d 967, 973 (Ind. 2002).

> This is not, however, a guideline to determine whether a worse offender could be imagined. Despite the nature of any particular offense and offender, it will always be possible to identify or hypothesize a significantly more despicable scenario. Although maximum sentences are ordinarily appropriate for the worst offenders, we refer generally to the class of offenses and offenders that warrant the maximum punishment. But such class encompasses a considerable variety of offenses and offenders.

Id. (internal citations omitted).

Our review of the nature of the offense reveals that Franklin had threatened to kill his estranged wife and anyone she was seeing. Franklin believed that his wife was seeing Thomas. The night before the shooting, Franklin slashed the tires on Thomas's vehicle. The next day, Franklin either followed Thomas or waited at his house and, when Thomas arrived, Franklin shot him in the head. Thomas's daughter, Franklin's wife, and her two children were in a vehicle nearby. Although Franklin argues that he "was experiencing severe emotional turmoil over his wife's transgressions," the nature of the offense reveals planning on Franklin's part. Appellant's Brief at 11. Further, nothing in the record provided to us indicates that Franklin was suffering severe emotional turmoil.

Our review of the character of the offender reveals that Franklin has convictions for robbery as a class B felony and theft in 1995 and a conviction for carrying a handgun without a license as a class C felony in 2000.[5] He was released to parole in February 2001, discharged from parole in February 2002, and discharged from probation in March 2003. He then committed the instant offense in December 2005. Franklin pleaded guilty to the instant offense and expressed remorse at the sentencing hearing.

Given the facts of the case and Franklin's criminal history and after due consideration of the trial court's decision, we cannot say that the sixty-five-year sentence imposed by the trial court is inappropriate in light of the nature of the offense and the character of the offender. See, e.g., Williams v. State, 782 N.E.2d 1039, 1052 (Ind. Ct.

[5] We were not provided with the presentence investigation report. However, the trial court discussed details of Franklin's criminal history during the sentencing hearing.

App. 2003) (holding that the defendant's sixty-five-year sentence for murder was not inappropriate in light of the nature of the offense and the character of the offender), trans. denied.

For the foregoing reasons, we affirm Franklin's sixty-five-year sentence for murder.

Affirmed.

SULLIVAN, J. and CRONE, J. concur